IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12266 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPENDRAKUMAR POONAMCAND PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12266 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MRS HANSA PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 12/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order passed by the

District Magistrate, Ahmedabad, on 2nd of April, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing the detention of the petitioner as bootlegger within the meaning of PASA Act. In pursuance of the said order, the petitioner is detained from 05th of July, 2004.

2. The grounds of detention as served upon the petitioner and as placed on record reveal that the detaining authority took into consideration two crime cases registered against the petitioner, one at Gandhinagar Police Station on 03.12.2004 and second at Viramgam Police Station on 13.1.2004, both under Sections 66(1)B, 65-AB, 116 (1)B and 81 of the Bombay Prohibition Act. In one case it was alleged that foreign liquor to the tune of 288 bottles and in second case 22 bottles were seized from the petitioner. The detaining authority took into consideration investigating papers in respect of these two offences registered against the petitioner. In both the cases, the petitioner was released on bail. Secondly, the detaining authority took into consideration two in-camera statements of witnesses recorded by sponsoring authority on 25.2.04 and verified by the sponsoring authority on 29.3.2004, wherein one witness stated that on 15th of February, 2004, the petitioner came to his place of business along with his associates and demanded money and on refusing by the witness, the witness was beaten by the petitioner and took away Rs. 538/- from the place of business. No complaint was registered in this respect on account of fear of the petitioner. The other witness stated that on 12th of February, 2004, along with his associates, the petitioner came to the house of the witness and informed him that police was watching the petitioner and the witness was forced to conceal bottles of foreign liquor at his residence. On refusal by the witness, petitioner rushed to beat the witness. The doors of neighbours came to be closed and petitioner and his associates damaged household of the witness at random. From the above material, the detaining authority reached to subjective satisfaction that foreign liquor was injurious to the public health, the petitioner was storing, selling and transporting such foreign liquor and thereby was indulged in antisocial activities. The detaining authority also took into consideration that the antisocial activities of the petitioner was prejudicial to maintenance of public order and such activities was required to be prevented forthwith. Therefore, as a last resort, the detaining authority passed order of detention of the petitioner under the PASA Act which is under challenge in this

Petition.

3. Learned Advocate Mr. Pandya for the petitioner and learned AGP Mrs. Hansa Punani for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner for quashing of the order under challenge and controverted by learned AGP, it appears that the petition can be disposed of on the ground that whether there was sufficient material before the detaining authority to reach to the subjective satisfaction that by the activities of the petitioner, maintenance of public order was disturbed or public health was adversely affected. Undoubtedly, the crimes, as aforesaid, under the Bombay Prohibition Act are registered against the petitioner. Likewise, there are two in-camera statements of witnesses as referred above. Before reaching to subjective satisfaction in respect of disturbance of public order or public health, there must be some material before the detaining authority denoting that activities of detenue directly or indirectly causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Merely filing of criminal cases against the petitioner would not lead to an inference that the activities of the petitioner was disturbing to public order or adversely affecting the public health. Going through the material as placed on record, so far as it relates to the offences registered against the petitioner, it is clear that there is nothing to interfere that activities of the petitioner was prejudicial to the maintenance of public order or adversely affecting public health. Then, if the statements recorded in-camera, are taken into consideration, it clearly reveal that stray individual incidents in which neither society at large nor section of society was involved so as to reach to the extent that the activities of the petitioner was prejudicial to the maintenance of public order or public health. The statements in-camera appears to be individual disputes and at the most though the incidents are not registered, may be termed breach of law and order. Even activity alleged to the petitioner either through registration of the crimes or through in-camera statements do not reveal involvement of public at large or even disturbing the tempo of life of the community or section of community. The facts of this case therefore are squarely covered by a decision of the Apex Court in the matter of RASHIDMIYA vs. POLICE COMMISSIONER, AHMEDABAD, as reported in AIR

1989 SC 1703 where in para-17 the Apex Court observed as under :

"17. The offences registered in the above mentioned four cases against the detenu on the ground that he was dealing in liquor have no bearing on the question of maintenance of public order in the absence of any other material that those activities of the detenu have adversely affected the maintenance of public order.

5. Thereafter in the same decision referring to a decision of the Apex Court in the matter of Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad, in para 20 the Apex Court observed as under :

"20 In a recent decision of this Court in Piyush Kantilal Mehta vs. The Commissioner of Police, Ahmedabad City, (1988) 4 JT 703: AIR 1989 SC 491, a question similar to one before us arose for consideration. In that case, the allegations in the grounds of detention were that the detenu was a prohibition bootlegger, that he has indulged into the sale of foreign liquor and that he and his associates indulged in use of force and violence and also beating innocent citizens by which an atmosphere of fear was created. In that case the detenu was alleged to have been caught red-handed possessing English wines with foreign marks and in the second occasion he was caught while shifting 296 bottles of foreign liquor in an Ambassador car. While dealing with that case, this Court observed as follows (at p. 497 of AIR):

"It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him, but surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affected adversely or are likely to affect adversely the maintenance of

public order."

6. In above of the matter, the order under challenge of detention of the petitioner is required to be quashed and set aside on the ground that there was total absence of material that the activities of the detenu was prejudicial to the maintenance of public order adversely affecting public health.

7. In the result, in view of above discussion, this Special Civil Application is allowed and the detention order passed against the petitioner under the PASA Act by District Magistrate, Ahmedabad, on 02nd of April, 2004, in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner Bhupendrakumar Poonamchand Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

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